

## ***6 Official Opinions of the Compliance Board 96 (2009)***

**Minutes – Content – Failure to include any information about topics considered in closed session beyond statutory language violated Act**  
**Minutes – Content – When closed administrative function conducted as part of meeting governed by Act, subsequent publicly available minutes must provide information beyond “administrative matters”**

March 31, 2009

*Ryan Bagwell*  
*The Arundel Muckraker*

The Open Meetings Compliance Board has considered your complaint that the Anne Arundel County Board of Education (“County Board”) has violated the Open Meetings Act by failing to disclose as part of its publicly available minutes information required under the Act following a closed session. For the reasons explained below, we find that the disclosures of meetings closed under §10-508 or involving an administrative function, with one exception, violated the Act in that the descriptions provided no meaningful explanation beyond parroting the applicable statutory provisions that justify closure.

### **I**

#### **Complaint and Response**

Your complaint focused on a series of closed meetings held by the County Board during the months of October through December 2008. Although the specifics differed, the allegation in connection with each meeting was the same - the County Board failed to provide sufficient detail in subsequent publicly available minutes about the closed session to satisfy the disclosure requirements under §10-509(c)(2).<sup>1</sup> The complaint described the reported descriptions as vague and inadequate.

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<sup>1</sup>All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

The first meeting occurred October 1, 2008, which was closed under §10-508(a)(1), (9), and (14). The publicly available minutes dated October 15, 2008, provided, in relevant part, that the County Board discussed “personnel matters” and “administrative matters” and indicated that the Board’s Internal Auditor provided a quarterly report. It was also noted that the County Board “did not have ample time to discuss negotiations.”

The complaint referred to a session held October 15<sup>2</sup> which was closed under §10-508(a)(9). The publicly available minutes indicated that “Mr. Davis updated the Board on negotiations” and that “[t]he Board considered administrative matters.”

The complaint referred to two closed sessions held November 5, 2008. During the morning session, the County Board conducted a session closed under, among other authority, §10-508(a)(9), in connection with collective bargaining matter. The publicly available minutes noted that “Mr. Davis updated the Board on negotiations.” The minutes also reported an afternoon session, closed under §10-508(a)(1), indicating that “[t]he Board discussed personnel matters.”

The complaint referred to a session on November 19 that was closed under, among other authority, §10-508(a)(9). Subsequent minutes stated that “Ms. Cuches [Office of Employee Relations] updated the Board on negotiations.”

The complaint also referred to a meeting closed on December 3 under §10-508(a)(7) and (9). The subsequent minutes revealed that “Mr. Bennett updated the Board on legal matters” and “Mr. Davis provided the Board with an update on negotiations.”

Finally, the complaint noted a change in the County Board’s practice during November 2008, in that it no longer lists “administrative matters” as a topic of discussion in its minutes. The complaint assumed that the prior references involved “administrative functions” under the Act. According to the complaint, “[i]f ‘administrative matters’ are still being routinely discussed in closed Board sessions, those topics of discussion must continue to be listed.”

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<sup>2</sup>The complaint actually referred to a closed session on November 15, 2008. However, this appeared to be a typographical error in that the cited exhibit referred to a closed session on October 15.

In a timely response, P. Tyson Bennett, Counsel to the County Board, acknowledged the responsibility of a public body to include specified information in the minutes following a closed session as required under §10-509(c)(2). The response further noted that the Compliance Board has repeatedly held that a public body is not expected to disclose a level of detail “that would defeat the desired confidentiality that lead to the closed session.” The response went on to address the individual meetings referenced in the complaint.

As to the closed session held October 1, 2008, the County Board’s position is that “revealing the nature of the personnel matter” would defeat the desired confidentiality that lead to the closure of the meeting. As to the “administrative matters,” the County Board offered to amend its minutes, expanding the description to read that “Mr. Federowicz reported to the Board on his goals for the internal Audit Report.” The response stated that Mr. Federowicz is the County Board’s internal auditor and that he reports directly to the Board.

As to the closed session held October 15, the County Board offered to amend its minutes as related to collective bargaining matters to indicate that “Mr. Davis reported to the Board on the status of negotiations with AFL, AFSCME, and SAAAAC.” The response indicated that Mr. Davis is the chief negotiator for the County Board and leads the County Board’s collective bargaining teams. As to the reference to administrative matters, the response stated that discussions involved an administrative function “which is not considered a ‘meeting’ under the Act.” These discussions “typically involve interaction between the Board’s assistant and various Board members to obtain a ‘head count’ of who among the members will be attending a certain PTA dinner, or a public visit by the State superintendent or the opening or re-opening of a school.” The response included an affidavit of the County Board’s assistant reflecting the type of items routinely recorded as “administrative matters” or “administrative functions” in the minutes

The response indicated that the County Board has offered to amend its minutes in connection with the November 5 morning session to reflect that “Mr. Davis updated the Board on the status of negotiations with the TAAAC, SAAAAC, and AEL,” three of the unions representing school system employees. As to the afternoon session, the County Board has offered to amend the minutes to reflect that “the Board discussed the details of the prospective appointment of a new employee.”

As to the November 19 session, the County Board has offered to amend its minutes to reflect that “Jessica Cuches, a member of the Board’s collective bargaining team, updated the Board on negotiations with TAAAC and AFSCME,” two of the unions representing school system employees.

The response indicated that the County Board also is willing to amend its minutes in connection with the closed session held December 3 to reflect that “Mr. Bennett updated the Board on pending health insurance and charter school contractual negotiations” and that “Mr. Davis updated the Board on negotiations with TAAAC.

With respect to each of the identified session, the response noted that no votes or actions were taken and that the County Board had complied with all the remaining provisions of the Act. The response also noted that the County Board is willing to provide additional substance in the description of closed sessions in its publicly-available minutes in the future.

## **II**

### **Analysis**

#### ***A. Public Record Following Closed Meetings - In General***

When a public body conducts a closed session under the Open Meetings Act, it is required to make public as part of the minutes of its next open session certain information in connection with the closed session.<sup>3</sup> This disclosure is separate and distinct from the disclosures required under §10-508(d)(2) in advance of the closed session. 6 *OMCB Opinions* 1, 5 (2008). Specifically, the minutes must reflect the time, place, and purpose of the closed session, a record of the vote of each member as to the closing of the session, the statutory authority under §10-508(a) justifying closure, persons present during the closed session, a listing of topics of discussion, and each action taken during the course of the closed session. §10-509(c)(2). Your complaint focuses on the reported descriptions, described in the complaint as “vague” and “inadequate.” To be sure, as counsel to the County Board pointed out, a

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<sup>3</sup>We have recognized an alternative option whereby public bodies may make the required information available in the minutes of a public session conducted on the same date, provided that the public is aware of the body’s practice, recognizing that the practice makes the information available to the public at an earlier time. *See, e.g., 4 OMCB Opinions* 114, 118 n. 5 (2005).

public body is not expected to provide “a level of detail that would defeat the desired confidentiality that lead to the closed session.” 3 *OMCB Opinions* 264, 270 (2003). However, we have also repeatedly held that the mere parroting of the statutory exception is inadequate. *Id.*; see also 6 *OMCB Opinions* 1, 5-6 (2008). We have long taken the position that the Act requires a statement reflecting both the purpose of the closed session and the topics of discussion; the latter is to give the public an opportunity to determine the basics for what occurred during a closed meeting. See, e.g., 3 *OMCB Opinions* 173, 178 – 80 (2002).

We turn to the descriptions provided in the publicly-available minutes in connection with meetings closed under provisions of the Act.

### ***B. Labor Negotiations***

Several of the closed sessions were closed under §10-508(a)(9) which allows a public body to close a meeting to either conduct collective bargaining negotiations or consider matters relating to the negotiations. These sessions occurred October 15, the morning session, November 5, November 19, and December 3. The initial disclosures in connection with these sessions provided the public no meaningful information beyond the fact that the sessions involved labor negotiations, merely parroting the statutory exception, and who provided the briefing. Given the County Board’s apparent acknowledgment that the descriptions were insufficient, extensive discussion is not required. We agree with the complainant that the descriptions in the minutes were inadequate, resulting in a violation of the Act. However, if the County Board amends the minutes to identify the various unions involved as it suggested in its response, the minutes would certainly satisfy the minimal disclosure requirements under the Act.

### ***C. Personnel and Legal Matters***

Two of the closed sessions involved personnel matters – October 1 and the afternoon session, November 5. While the minutes set out the applicable statutory authority and repeated the statutory provision, the only additional information provided under the caption “Items Considered, Action Taken and Recorded Votes,” was that “[t]he Board discussed personnel matters.” This fails to satisfy the requirements of the Act. Similarly, the description of the December 3 session indicated that “Mr. Bennett updated the Board on legal matters.” Because this description also merely repeat the statutory language, the minutes fail to satisfy the disclosure requirements of the Act. If the County Board amends the minutes in connection with the closed session held during

the afternoon of November 5 as it offered, the disclosure would satisfy the requirements of the Act. Similarly, if the County Board expanded the disclosure in connection with the legal advice that occurred on December 3 as suggested, the disclosure would appear sufficient.<sup>4</sup>

As to the closed session October 1, the County Board has taken a different position, claiming that “revealing the nature of the personnel matter” would defeat the confidentiality justifying the closed session. We disagree. A public body must find a way to inform the public of the “topic of discussion” beyond the mere label “personnel matter.” 4 *OMCB Opinions* 76, 78 (2004). Merely parroting the statutory basis supporting closure is far too cryptic to satisfy the Act.

#### ***D. Administrative Function***

Generally, when a public body meets to carry out an administrative function,<sup>5</sup> the provisions of the Open Meetings Act, including the requirement that publicly-available minutes reflect certain information in connection with a prior closed meeting, do not apply. §10-503(a)(1)(i).<sup>6</sup> However, in situations where a public body recesses an open session to address a subject that qualifies under the definition of an “administrative function” outside of the view of the public, similar disclosures must be made in the minutes of the next open meeting. §10-503(c).<sup>7</sup> Even if a meeting is closed to the public

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<sup>4</sup>We do not interpret the complaint as questioning the propriety of any of the closed sessions. Thus, we have limited our review to the adequacy of the minutes - - the focus of the complaint. However, we point out that, from the record before us, it is not clear whether the attorney’s discussion with the County Board actually involved providing legal counsel. See 5 *OMCB Opinions* 130, 133-34 (2007).

<sup>5</sup>We have issued an extensive number of opinions addressing the determination of whether a discussion qualifies as an “administrative function” under §10-502(b), so we need not repeat that analysis here. See, e.g., 3 *OMCB Opinions* 39 (2000) (addressing executive function – now, administrative function – exclusion to proceedings of local board of education).

<sup>6</sup>This exception does not extend to a public body involved in issuing a license or permit or to consider any zoning matter. §10-503(b). However, neither of these limitations is applicable here.

<sup>7</sup>The statute reads:

If a public body recesses an open session to carry  
out an administrative function in a meeting that is not

under §10-508 without a substantive open session, if administrative functions are considered during the course of the closed session, the disclosure requirements apply because every meeting closed under §10-508 must start as a public meeting in order that the procedural requirements for closing a meeting can be followed. As in the case of the disclosure requirement discussed above, we have held that mere parroting of the statutory term, *i.e.*, “review of an administrative item,” is insufficient when disclosure is required. *6 OMCB Opinions* 1, 7 (2008).

During the closed session on October 1, the County Board heard from its internal auditor on an audit report. While the County Board agreed to expand its description in the publicly-available minutes, in our view, the initial description satisfied the minimal disclosure requirements of the Act. *Cf. 6 OMCB Opinions* 23, 25-27 (2008) (discussing role of auditor employed by local board of education). However, the reference to “consider[ation] of administrative matters” in connection with the October 15 session failed to satisfy the Act’s disclosure requirements.

The County board did not address the general allegation in the complaint as to the reporting of administrative matters. Thus, we are unable to address this matter outside the context of a specific meeting.

### **III**

#### **Conclusion**

In summary, we find that the disclosures provided in the minutes following meetings identified in the complaint as closed under §10-508 or involving an administrative function, other than the October 1 session as it pertained to an administrative function, violated the Act in that the descriptions provided no

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open to the public, the minutes for the public body’s next meeting shall include:

- (1) a statement of the date, time, place, and persons present at the administrative function meeting; and
- (2) a phrase or sentence identifying the subject matter discussed at the administrative function meeting.

meaningful explanation beyond parroting the applicable statutory provisions justifying closure.<sup>8</sup>

OPEN MEETINGS COMPLIANCE BOARD

*Elizabeth L. Nilson, Esquire*

*Courtney J. McKeldin*

*Julio Morales, Esquire*

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<sup>8</sup>Although not raised in the complaint, we would be remiss if we failed to point out that the publicly available disclosures failed to reflect the vote in support of closing a meeting under the act. *See* §10-509(c)(2)(ii).